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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIKA OKJE ERDMANN-BROWNING
and JACQUELINE BENITEZ, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

THOMAS J. VILSACK, Secretary of the
United States Department of Agriculture, in
his official capacity, SHALANDA YOUNG,
Director of the United States Office of
Management and Budget, in her official
capacity.

Defendants.

Case No.: 4:23-cv-04678-JST

**DECLARATION OF JODIE BERGER
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

CLASS ACTION

Action filed: September 12, 2023

1 I, Jodie Berger, declare:

2 1. I am an attorney licensed to practice law in the State of California and am one of
3 the attorneys for plaintiffs in this case. I have personal knowledge of the facts contained in this
4 declaration unless indicated otherwise, and, if called as a witness, am competent to testify to
5 those facts.

6 2. On November 7, 2023, I sent a demand letter by mail to United States Secretary
7 of Agriculture Thomas J. Vilsack, Deputy Undersecretary Stacy Dean, and Director Shalanda
8 Young of the Office of Management and Budget requesting that USDA and OMB confirm that
9 they would issue guidance to states confirming that they should meet their regular timeframe for
10 timely issuance of SNAP benefits, or otherwise confirm that the January issuances may proceed
11 without stopping or delaying their issuance. I also sent the letter to Secretary Vilsack and
12 Undersecretary Dean by email on November 8. I did not receive a notice that the email was
13 undeliverable. Attached to this declaration and marked as Exhibit 1 is a true and correct copy of
14 the November 7, 2023 letter and subsequent email.

15 3. As of 9:00 a.m. on September 13, 2023, I had yet to receive a response from
16 Defendants.

17 4. When the October 2023 CalFresh (California's SNAP program) benefits were at
18 risk of delayed issuance due to the potential lapse of federal funding, I asked the Deputy Director
19 of the Family Engagement and Empowerment Division at the California Department of Social
20 Services, Alexis Fernández Garcia, about the deadline for transmitting their electronic data files
21 to the state's Electronic Benefit Transfer (EBT) vendor to ensure timely issuance of October
22 CalFresh benefits. Ms. Fernández Garcia responded that the Department must send the files to
23 the vendor by September 21, 2023. It would, however, need to make the decision about sending
24 the files the day before, on September 20. Attached to this declaration and marked as Exhibit 2
25 is a true and correct copy of the September 14, 2023 email from Ms. Fernández Garcia.

26 5. On October 25, 2023, I emailed Cary Jeffers, Director of Product for Fidelity
27 National Information Services (FIS), a major EBT vendor. I asked Mr. Jeffers what the deadline
28 was for FIS to process the electronic data files from state agencies for timely issuance of January

1 SNAP benefits. I asked whether it would be December 22 or a later date, due to the December
2 holidays. On October 26, he replied that FIS processing would need to be about a week earlier,
3 “since the corporation does not allow changes, modifications within one week of any major
4 holiday.” Attached to this declaration and marked as Exhibit 3 is a true and correct copy of my
5 October 2023 email exchange with Mr. Jeffers.

6 6. Since early August 2023, proposed class counsel has been diligently investigating
7 the specific claims in this case since it became apparent that Congress would not enact
8 appropriations bills before the end of Federal Fiscal Year 2022-23, reinforced when members of
9 Congress voiced opposition to a continuing resolution. Counsel have evaluated the legal issues
10 relating to the SNAP program and the EBT issuance process, consulted hunger experts, food
11 bank professionals and an economist.

12 7. I have been in constant communications with counsel for defendants about the
13 status of ongoing SNAP benefits and the plaintiffs’ intent to request issuance of a preliminary
14 injunction if it was likely that there would not be an appropriations bill or continuing resolution
15 funding SNAP prior to the middle of the last month prior to a suspension of SNAP benefits due
16 to lapse in specific federal funding.

17 I declare under penalty of perjury, under the laws of the United States and the State of
18 California, that the foregoing is true and correct.

19 Executed on the 13th day of November 2023, at Oakland, California.

20
21 By:


Jodie Berger

WESTERN CENTER ON LAW AND
POVERTY

EXHIBIT 1



www.wclp.org

November 7, 2023

Sent US mail and also electronically as indicated

Secretary of Agriculture Tom Vilsack
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250
AqSec@usda.gov

Deputy Undersecretary Stacy Dean
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250
stacy.dean@usda.gov

Shalanda Young, Director
Office of Management and Budget
725 Seventeenth Street NW.
Washington, DC 20503

Re: January 2024 SNAP issuances

Dear Secretary Vilsack and Undersecretary Dean and Director Young:

We write regarding the ongoing litigation *Erdmann-Browning v. Vilsack* in the Northern District of California and the potential interruption or delay of SNAP benefits during any government shutdown. We appreciate that the Continuing Resolution Act of 2024 provides for issuance of SNAP benefits to existing and new households through December 2024.

The 53 SNAP agencies will need guidance in December regarding the issuance of January 2024 benefits. The current USDA contingency plan provides for the cessation of SNAP after the utilization of any reserve funds, which is contrary to the provisions of the U.S. Code governing SNAP. Congress has directed the payment of SNAP benefits to all eligible households that apply to participate without any requirement for an annual appropriation.

We therefore request that OMB and USDA confirm that they will take the steps necessary to instruct states that SNAP issuances for January 2024 and subsequent months will continue in the event of a government shutdown or any lapse in specific appropriation legislation.

If we do not hear from you by Friday November 10, 2023, we will file a preliminary injunction

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November 7, 2023

January 2024 Issuances, p. 2

motion on shortened time and possibly a TRO to enforce these obligations in hopes of reaching a resolution by mid-December.

Sincerely,



Western Center on Law & Poverty

jberger@wclp.org

cc: Kyla Snow, US Dept. of Justice

Kyla.Snow@usdoj.gov

Chetan Patil, US Dept. of Justice

Chetan.Patil@usdoj.gov

Jodie Berger

From: Jodie Berger
Sent: Wednesday, November 8, 2023 5:14 AM
To: AgSec@usda.gov; stacy.dean@usda.gov; Snow, Kyla (CIV); Patil, Chetan (CIV)
Subject: Letter re: January 2024 SNAP issuances
Attachments: USDA.OMB demand re 2024 benefits.pdf

Please see the attached time sensitive letter requesting a response regarding issuance of January 2024 SNAP benefits should the government shut down.



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EXHIBIT 2

Jodie Berger

From: Fernández Garcia, Alexis@DSS <Alexis.Garcia@dss.ca.gov>
Sent: Thursday, September 14, 2023 2:19 PM
To: Jodie Berger
Cc: Yang, Kat@DSS; Brayboy, Andrea@DSS
Subject: RE: SNAP/EBT vendor: clarification

Jodie,

Informing the EBT vendor kicks off their internal process to prepare for receiving the files on 9/21. As of now, we plan to do that tomorrow (unless something unexpected comes up). As I previously stated, we will make a final decision as to whether we will be issuing benefits early by 9/20.

Note: you mention below "receiving benefits on October 1". I want to clarify that the purpose of the early issuance is to issue most benefits before October 1 (i.e., within the month of September)

-a

Alexis Fernández Garcia
Deputy Director
Family Engagement and Empowerment Division
Department of Social Services
Cell: 916-201-0298

From: Jodie Berger <jberger@wclp.org>
Sent: Thursday, September 14, 2023 1:37 PM
To: Fernández Garcia, Alexis@DSS <Alexis.Garcia@dss.ca.gov>
Cc: Yang, Kat@DSS <Kat.Yang@dss.ca.gov>; Brayboy, Andrea@DSS <Andrea.Brayboy@dss.ca.gov>
Subject: SNAP/EBT vendor: clarification
Importance: High

Sorry to bother you again, but I would like to make sure I am understanding the difference between what the state must communicate to the vendor on the 15th and the 20th.

When you stated that CA must inform the EBT vendor by early tomorrow whether it intends to issue benefits:

- 1) Does California intend to inform the vendor tomorrow that it intends to issue benefits early by September 15?
- 2) What is the consequence if California does not communicate such information tomorrow to the vendor in terms of SNAP recipients receiving benefits on October 1?
- 3) What are the consequences for SNAP recipients in terms of the timely receipt of SNAP benefits beginning on October 1 if California instead informs the vendor on Monday, September 18, Tuesday, September 19, or even Wednesday, September 20?

Thank you again.

From: Jodie Berger <jberger@wclp.org>
Sent: Thursday, September 14, 2023 1:20 PM

To: Robert Newman <Rnewman@wclp.org>

Subject: draft: One more clarification re: EBT files

Does CA intend to tell the vendor that the state intends to issues benefits tomorrow? What is the consequence if CA does not do that?

What happens if you inform the vendor on Monday or any day through the 20th.



Jodie Berger (she/her)

Senior Attorney

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From: Fernández Garcia, Alexis@DSS <Alexis.Garcia@dss.ca.gov>

Sent: Thursday, September 14, 2023 1:03 PM

To: Jodie Berger <jberger@wclp.org>

Cc: Yang, Kat@DSS <Kat.Yang@dss.ca.gov>; Brayboy, Andrea@DSS <Andrea.Brayboy@dss.ca.gov>

Subject: RE: Court needs to know: CA transmission dates

Jodie,

I'm combining our response to your original email (attached) and the email below.

After additional discussions with our EBT vendor and other state partners, we've determined that we must inform our EBT vendor of our intent to issue benefits early by Friday, September 15 but the files themselves do not need to be sent to the EBT vendor until Thursday, September 21. As a practical matter, this means we must decide whether to issue benefits early by Wednesday, September 20. This would allow us to issue October 2023 benefits to most households within the month of September.

We are not able to sign a declaration.

Thanks,
Alexis

Alexis Fernández Garcia

Deputy Director

Family Engagement and Empowerment Division

Department of Social Services
Cell: 916-201-0298





From: Jodie Berger <jberger@wclp.org>
Sent: Thursday, September 14, 2023 10:16 AM
To: Fernández Garcia, Alexis@DSS <Alexis.Garcia@dss.ca.gov>
Cc: Yang, Kat@DSS <Kat.Yang@dss.ca.gov>; Brayboy, Andrea@DSS <Andrea.Brayboy@dss.ca.gov>
Subject: Court needs to know: CA transmission dates

The TRO hearing was this morning. The court asked whether CA intends to send the EBT files to its vendor on 9/15/23.

- 1) Is CA going to send the EBT files 9/15?
- 2) If not, is there any later date to send the files so that benefits start on 10/1/23, and what would that drop dead date be.

Would CA be willing to sign a declaration about the above? We could then provide that evidence to the court.



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EXHIBIT 3

Jodie Berger

From: Jeffers, Cary <Cary.S.Jeffers@fisglobal.com>
Sent: Thursday, October 26, 2023 9:46 AM
To: Jodie Berger
Subject: RE: SNAP - round 2 - January benefit EBT data transmission deadline?

It would need to be about a week earlier due to the Holidays. As FIS is a major payments processor in the debit/credit card space, as such our corporation does not allow changes, modifications within one week of any major holiday (known as 'RED' days), and as we all know Christmas is a major holiday where lots of financial transactions take place.

From: Jodie Berger <jberger@wclp.org>
Sent: Wednesday, October 25, 2023 3:52 PM
To: Jeffers, Cary <Cary.S.Jeffers@fisglobal.com>
Subject: SNAP - round 2 - January benefit EBT data transmission deadline?
Importance: High





Hi, Cary. Hope you are enjoying the fall days.

The continuing resolution covers 11-12/23 SNAP benefits, but with Congress limping along, we need to protect January and ongoing benefits.

We are proposing a court date that will get an order, if we prevail, in sufficient time for states to send the EBT files for timely distribution of the 1/1/24 benefits. **Would that be 12/22** (based on our prior conversations)? **Or a different date because of the holiday?**

Thank you.



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